

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

ACE GALVANIZING, INC.,	)	
	)	
Appellant,	)	PCHB No. 88-143
	)	
v.	)	
	)	FINAL FINDINGS OF FACT,
PUGET SOUND AIR POLLUTION	)	CONCLUSIONS OF LAW
CONTROL AGENCY,	)	AND ORDER
	)	
Respondent.	)	

---

This matter, the appeal of a Notice and Order of Civil Penalty No. 6861 of \$1,000 for alleged violations of Section 9.15, Fugitive Dust Emission Standard, of Puget Sound Air Pollution Control Agency's (PSAPCA) Regulation I, came on for hearing February 13, 1989 in Lacey, Washington, before the Board, Harold S. Zimmerman, Presiding; Wick Dufford, Chairman; and Judith A. Bendor, Member.

Appellant Ace Galvanizing, Inc., appeared through its consultant, Peter J. Pedone, Sr., owner of Environmental Regulatory Compliance.

1 Respondent PSAPCA was represented by its attorney, Keith D. McGoffin.  
2 Reporter Kim Otis of Gene Barker & Associates recorded the case.

3 Witnesses were sworn and testified. Exhibits were admitted and  
4 examined. Argument was heard. From the testimony, exhibits and  
5 contentions of the parties, the Board makes these

## 6 FINDINGS OF FACT

### 7 I

8 The Puget Sound Air Pollution Control Agency ("PSAPCA") is an  
9 activated air pollution control authority under the terms of the State  
10 of Washington Clean Air Act, responsible for carrying out a program of  
11 air pollution prevention and control in its area of jurisdiction,  
12 which includes the Duwamish tideflats, the scene of the events at  
13 issue. PSAPCA has filed with the Board certified copies of its  
14 Regulation I (including all amendments thereto).

15 The Board takes official notice of the Regulation (as amended).

### 16 II

17 Appellant Ace Galvanizing is located at 429 South 96th Street in  
18 an industrialized Seattle neighborhood known as South Park. The site  
19 is in a non-attainment area for national ambient air quality standards  
20 for particulates. These are health-based standards.

### 21 III

22 Section 9.15 of PSAPCA's Regulation I reads, in pertinent part,  
23 as follows:  
24

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

PCHE No. 88-143

(2)

[illegible]

(d) It shall be unlawful for any person to cause or allow the emission of fugitive dust in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

## IV

David J. Lenington, an air pollution inspector employed by PSAPCA, is assigned the general geographic area of the Duwamish tideflats industrial area. On June 15, 1988, at approximately 2:15 p.m., Inspector Lenington observed visible bluish white emissions from the southside roof vents of Ace Galvanizing, Inc. About an hour later, he observed these emissions again and took three photographs over a 5-minute period in which the emissions are visible. He then went into the building to make an inspection. He observed that as objects were dipped in the zinc tank opaque clouds of smoke were emitted which were only partially controlled by the hood located over the zinc tank. The rest of the visible emissions made their way out of the building through available openings.

Inspector Lenington, a trained plume reader, testified on the basis of his observations both inside and outside on June 15, 1988, that the emissions from Ace Galvanizing on that day were not merely steam, but contained particulates.

V

The fume control hood leading to the baghouse is located over the galvanizing zinc bath, but does not capture all emissions which arise from the tank. During dipping, as observed by Inspector Lenington, emissions may billow out too fast and air moving through the building can move the plume away from the hood. Such fugitive emissions eventually escape through side and roof vents. Thus, despite the expenditures made by the company (see below), it has not eliminated visible particulate emissions.

VI

After making his observations Inspector Lenington issued Notice of Violation No. 025170 to Ace Galvanizing. D.A. Breiwick, president of Ace, signed the notice which alleged a violation of Section 9.15(d) of PSAPCA Regulation I. Subsequently, PSAPCA issued Notice and Order of Civil Penalty No. 6861 (\$1,000) which was timely appealed and became our PCHB No. 88-143.

VII

Some years earlier, on June 11, 1985, Frederick L. Austin, PSAPCA's air pollution source analyst conducted a source test at Ace Galvanizing. The results of this source test of fugitive emissions from the roof of the galvanizing facility, were reported to Ace on September 20, 1985. The material captured in the test included (among other things) particulate material.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB No. 88-143

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

VIII

Because Ace Galvanizing is located in an area which is not in compliance with national ambient air quality standards for suspended particulate, any discharged particulates into the ambient air in such an area exacerbates an already existing air quality problem.

Ace is located in an industrial area, where residential encroachment is occurring. This means that the particulate non-attainment problem is affecting local residents as well as industrial activities.

IX

Appellant company did not present evidence effectively rebutting PSAPCA's presentation on the probable content of the emissions. We find, therefore, that a preponderance of the evidence supports the agency's position that Ace was emitting particulate matter to the outdoor air on June 15, 1988.

Penalty Amount, Background

X

Mike Buckland, General Manager of Ace, reported that the company in 1986, spent \$15,000 on a new fume control hood for the galvanizing kettle and changed from the wet flux to a dry flux galvanizing process, which produces less smoke. In 1987 Ace spent approximately \$30,000 for air quality improvement: installed new filter bags,

1 re-sealed and painted all surfaces of the baghouse. More recently,  
2 the company has purchased and installed a filtering system for the  
3 pre-flux tank, at a cost of \$5,446.80.

4 XI

5 Prior to the violation at issue here, on May 3, 1988, Ace  
6 Galvanizing, Inc., was sent Notice of Violation Nos. 25166 and 25125  
7 referring to PSAPCA visual inspections on March 29, 1988 and April 12,  
8 1988, during which the discharge of particulates was observed. Ace  
9 was advised that it is located in a non-attainment area for  
10 particulates and informed that the national standards which are being  
11 exceeded are set at levels deemed necessary to protect the public's  
12 health and welfare. The company was asked to report on corrective  
13 measures taken to minimize or eliminate the chance of recurrence. No  
14 penalties were assessed in connection with these events.

15 XII

16 Any Conclusion of Law deemed to be a Finding of Fact is  
17 hereby adopted as such.

18 From these Findings of Fact, the Board makes these

19 CONCLUSIONS OF LAW

20 I

21 The Board has jurisdiction over these parties and these matters.  
22 Chapters 43.21B and 70.94 RCW.

23  
24  
25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

PCHB No. 88-143

(6)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

II

The language of PSAPCA Regulation I, Section 9.15(d) (See Finding of Fact III, above) parallels the definition of "air pollution" itself in the underlying statute, RCW 70.94.030(2), and properly encompasses not only emissions which cause demonstrable harm, but also emissions of a character and duration which create a a harmful potential. (See Kaiser Aluminum v. Pollution Control Hearings Board, 33 Wn.App. 352, 355, 654 P.2d 723 (1982)).

III

We conclude that emissions caused by Ace Galvanizing, Inc., on the afternoon of June 15, 1988, had such effects on persons and property as to violate Section 9.15(d). The emissions containing particulates were observed to continue over a considerable period of time in an area where national standards based on health protection are already being exceeded. Under all the circumstances, we conclude that the emissions were of a character and duration as is likely to cause harm. See Puget Chemco, Inc. v. PSAPCA, PCHB No. 84-245 (1985).

IV

The notice of penalty at issue asserts violations of both Section 9.15(d) and WAC 173-400-040(8). Since we decide that section 9.11(d) was violated, we need not consider WAC 173-400-040(8).

V

The appropriateness of the amount of a civil penalty is a matter

1 involving consideration of factors bearing on reasonableness. These  
2 include:

- 3 a) the nature of the violation;
- 4 b) the prior behavior of the violator;
- 5 c) actions taken after the violation to solve the problem.

6 Georgia Pacific Corp. v. DOE, PCHB No. 87-45 (1988).

7 VI

8 On the basis of the record before us, we conclude that the  
9 penalty imposed in this instance is reasonable.

10 The violation was of a standard relating to the potential  
11 environmental harm. The occurrence was in a non-attainment area for  
12 national standards designed to protect health.

13 The prior behavior of the violator indicates a long-term history  
14 of difficulty in maintaining compliance with related air pollution  
15 control regulations. See Ace Galvanizing v. PSAPCA, PCHB No. 84-314  
16 (1985). The record does not disclose that these problems have been  
17 solved, despite the expenditure for equipment, and the changing of  
18 processes in the plant. The law requires the source to solve air  
19 pollution problems and does not give the agency the authority to  
20 specify how this is to be done.

21 VII

22 Any Finding of Fact deemed to a Conclusion of Law is hereby  
23 adopted as such.

24 From these Conclusions of Law, the Board enters this

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER  
PCHB No. 88-143

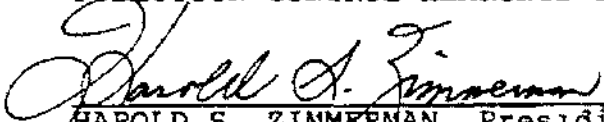


ORDER


PSAPCA's Civil Penalty No. 6861 issued to Ace Galvanizing, Inc.,  
is AFFIRMED.

DONE this 14<sup>th</sup> day of March, 1989.

POLLUTION CONTROL HEARINGS BOARD

  
HAROLD S. ZIMMERMAN, Presiding

  
JUDITH A. BENDOR, Member

  
WICK DUFFORD, Chairman

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
PCHB No. 88-143